

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION – BAY CITY**

In re:

BOYCE HYDRO, LLC, *et al.*

Debtors.<sup>1</sup>

Chapter 11

Case No. 20-21214

Hon. Daniel S. Opperman

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**LIQUIDATING TRUSTEE'S APPLICATION TO  
EMPLOY O'KEEFE & ASSOCIATES CONSULTING, LLC  
FOR LITIGATION SUPPORT SERVICES**

The Liquidating Trustee, Scott A. Wolfson, through counsel, for his *Application To Employ O'Keefe & Associates Consulting, LLC For Litigation Support Services* ("Application"), states:

**JURISDICTION AND VENUE**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.
2. This is a core proceeding under 28 U.S.C. § 157(b).
3. Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409.

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal taxpayer-identification number, are: (i) Boyce Hydro, LLC (6694), Case No. 20-21214 and (ii) Boyce Hydro Power, LLC (3034), Case No. 20-21215.

## **BACKGROUND**

4. Debtors commenced voluntary cases under Chapter 11 of Title 11 of the United States Code on July 31, 2020 (“Petition Date”).

5. On February 23, 2021, Debtors filed their *Fourth Modified Joint Consolidated Chapter 11 Plan of Liquidation* (“Plan”).<sup>2</sup> [Docket No. 481].

6. On February 25, 2021, the Bankruptcy Court entered the *Non-Consensual Order Confirming Debtors’ Fourth Modified Joint Consolidated Chapter 11 Plan of Liquidation* (“Order Confirming Plan”). [Docket No. 489].

7. The Order Confirming Plan approved the establishment of the Boyce Hydro Liquidating Trust (“Liquidating Trust”) and the Liquidating Trustee’s appointment as trustee of the Liquidating Trust as of the Effective Date.

8. The Effective Date of the Plan is March 3, 2021. [Docket No. 493].

9. On July 29, 2022, the Liquidating Trustee initiated Adversary Proceeding Case No. 22-02023 against The Kogan Law Group, P.C. (“Kogan”). [Docket 707].

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<sup>2</sup> Capitalized terms used but not defined in this Application have the meanings given to them in the Plan or Liquidating Trust, as applicable.

## **RELIEF REQUESTED**

10. The Liquidating Trustee requests that the Court authorize him to retain and employ O'Keefe & Associates Consulting, LLC ("O'Keefe") as an expert witness and for litigation support in connection with the prosecution of the Kogan adversary proceeding.

## **BASIS FOR RELIEF REQUESTED**

11. Under the Plan, the Liquidating Trust is vested with the right to "commence, prosecute, defend against, settle, and realize upon any rights, Claims, causes of action, defenses, and counterclaims in his discretion, in Bankruptcy Court or in other forums, in accordance with the Liquidating Trust Agreement and what is in the best interests, and for the benefit, of Liquidating Trust Beneficiaries." [Docket No. 481].

12. Section 7.1(a) of the Liquidating Trust Agreement permits the Liquidating Trustee to retain his own professionals, including accountants and other agents or advisors, to assist the Liquidating Trustee in administering the Liquidating Trust. (Liquidating Trust Agreement, § 7.1(a)).

13. Employment of Professionals is subject to review and approval of the Bankruptcy Court and compliance with 11 U.S.C. § 327. (Liquidating Trust Agreement, § 7.1(a)).

14. Section 327(a) of the Bankruptcy Code states that a trustee, subject to court approval, "may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title."

15. Rule 2014 of the Bankruptcy Rules requires that an application for retention include:

[S]pecific facts showing the necessity for the employment, the name of the [firm] to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's knowledge, all of the [firm's] connections with the debtor, creditors, any other party in interest, its respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.

#### **A. Necessity and Qualifications**

16. The Liquidating Trustee has selected O'Keefe primarily because O'Keefe has considerable experience in the areas of bankruptcy, insolvency, and litigation support. O'Keefe is able to provide analysis regarding various financial and economic matters relating to the Kogan litigation, including rendering an opinion regarding Debtors' insolvency, which is an element of the Liquidating Trustee's claims against Kogan.

17. The Liquidating Trustee believes that O'Keefe is both well qualified and able to provide litigation support services to the Liquidating Trustee in an efficient and timely manner in connection with the prosecution of the adversary proceeding.

**B. Services to Be Provided**

18. O'Keefe will provide financial analysis regarding various financial and economic matters relating to this litigation.

19. If necessary, O'Keefe will provide deposition testimony as an expert witness.

20. Additionally, if necessary, O'Keefe will assist in trial preparation and provide expert testimony.

**C. Professional Compensation**

21. As set forth in the Engagement Agreement attached as Exhibit 6, O'Keefe will be paid for its services based on their hourly Professional Rates which range from \$140 (Interns), \$150-\$240 (Analysts), \$250 - \$290 (Associates), \$300-\$470 (Directors) to \$650 per hour for Pat O'Keefe, CEO. C. Keith Chulumovich ("CKC") will be managing this project and his rate is \$380 per hour. Russel D. Long's ("RDL") rate is \$460.

22. O'Keefe will seek compensation for the hourly rate plus expenses for either CKC's or RDL's deposition and trial testimony.

23. O'Keefe will be paid all reasonable travel and other extraordinary expenses incurred during the performance of the services.

24. O'Keefe will be paid 3% of their professional fees representing an allocation of internal support activities including but not limited to computer usage, telephone charges, postage, printing, and other professional services.

25. O'Keefe will receive a \$12,000 retainer to commence services, which will be applied to their final billing with any excess being immediately refunded.

26. O'Keefe will seek Court approval of any compensation or reimbursement of expenses pursuant to the Liquidating Trust Agreement and the *Order Establishing Procedures For Seeking Approval Of Fees And Expenses Of Liquidating Trustee And Professionals And Non-Professionals Retained By Liquidating Trustee*. [Docket No. 531].

**D. No Adverse Interest, Disinterestedness, and Disclosure of Connections**

27. O'Keefe has not rendered any services with respect to or involving Debtors' Chapter 11 cases.

28. Subject to the Declaration of Patrick O'Keefe attached as Exhibit 5, O'Keefe: (a) does not have any connection with Debtors, their affiliates, their creditors, the United States Trustee, any person employed in

the office of the United States Trustee, or any other party-in-interest or their respective attorneys and accountants; (b) are “disinterested person[s],” as that term is defined 11 U.S.C. § 101(14); and (c) do not hold or represent an interest adverse to Debtors’ estates.

29. More specifically:

- i. None of the professionals of O’Keefe hold or represent an interest adverse to the Debtors’ estates.
- ii. Neither O’Keefe, nor any professional of O’Keefe, is or was a creditor, equity holder, or an insider of Debtors.
- iii. Neither O’Keefe, nor any professional of O’Keefe, is or was, within two years before the Petition Date, a director, officer, or employer of any entity owned or operated by the Debtors.

30. The Liquidating Trustee has not made a previous request to this or to any other court for the relief sought in this Application.

WHEREFORE, the Liquidating Trustee respectfully requests that the Court enter an order, substantially in the form attached as Exhibit 1, granting the relief requested in the Application and additional relief as is just and equitable.

Respectfully submitted,

WOLFSON BOLTON KOCHIS PLLC

Dated: March 7, 2023

By: /s/ Anthony J. Kochis  
Anthony J. Kochis (P72020)  
3150 Livernois, Suite 275  
Troy, MI 48083  
Telephone: (248) 247-7105  
Facsimile: (248) 247-7099  
E-Mail: akochis@wolfsonbolton.com

## **EXHIBIT INDEX**

EXHIBIT 1	Proposed Order
EXHIBIT 2	Notice of Motion and Opportunity to Respond
EXHIBIT 3	n/a
EXHIBIT 4	Certificate of Service
EXHIBIT 5	Declaration of Patrick O'Keefe
EXHIBIT 6	O'Keefe Engagement Agreement

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
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In re:

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Chapter 11

Case No. 20-21214

Hon. Daniel S. Opperman

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**ORDER GRANTING LIQUIDATING TRUSTEE'S APPLICATION TO  
EMPLOY O'KEEFE & ASSOCIATES CONSULTING, LLC FOR  
LITIGATION SUPPORT SERVICES**

The Court having reviewed *Application To Employ O'Keefe & Associates Consulting, LLC For Litigation Support Services* ("Application")<sup>2</sup> and the Declaration of Patrick O'Keefe filed in support of the Application, the Court having found that: (a) jurisdiction to consider the Application is proper under 28 U.S.C. §§ 157 and 1334; (b) venue is proper before this Court under 28 U.S.C. §§ 1408 and 1409; (c) notice of the Application was properly provided; and (d) good cause exists to grant the relief requested in the Application;

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<sup>2</sup> Capitalized terms used but not defined have the meanings given to them in the Application.

**IT IS HEREBY ORDERED** that:

1. The Application is granted.
2. The Liquidating Trustee is authorized to employ O'Keefe & Associates Consulting, LLC as an expert witness and for litigation support as set forth in the Application and the Engagement Agreement attached as Exhibit 6 to the Application.
3. O'Keefe & Associates Consulting, LLC shall be compensated for its services as set forth in the Liquidating Trust Agreement and the *Order Establishing Procedures For Seeking Approval Of Fees And Expenses Of Liquidating Trustee And Professionals And Non-Professionals Retained By Liquidating Trustee*. [Docket No. 531].

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In re:

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Chapter 11

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**NOTICE OF LIQUIDATING TRUSTEE'S APPLICATION TO EMPLOY  
O'KEEFE & ASSOCIATES CONSULTING, LLC FOR LITIGATION  
SUPPORT SERVICES AND OPPORTUNITY TO RESPOND**

The Liquidating Trustee, Scott A. Wolfson, has filed papers with the Court seeking authorization to retain and employ O'Keefe & Associates Consulting, LLC, as an expert witness and for litigation support in connection with Adversary Proceeding Case No. 22-02023 filed against The Kogan Law Group, P.C.

**Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney you may wish to consult one.)**

If you do not want the court to grant the relief requested in the Application, or if you want the court to consider your views on the Application, within **14 days**, you or your attorney must:

1. File with the court a written response of answer<sup>2</sup>, explaining your position at:

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<sup>2</sup> Any response or answer must comply with F. C. Civ. P. 8(b), (c), and (e).

Street Address: United States Bankruptcy Court 111 First Street Bay City, Michigan 48708	Mailing Address: United States Bankruptcy Court P.O. Box 911 Bay City, Michigan 48707
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If you mail your response to the court for filing, you must mail it early enough so the court will **receive** it on or before the date stated above. All attorneys are required to file pleadings electronically.

You must also mail a copy to:

Wolfson Bolton Kochis PLLC  
 Attn: Anthony J. Kochis  
 3150 Livernois, Suite 275  
 Troy, MI 48083

2. If a response or answer is timely filed and served, the clerk will schedule a hearing on the Application and you will be served with a notice of the date, time and location of the hearing.

**If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the Application or objection and may enter an order granting that relief.**

Respectfully submitted,  
 WOLFSON BOLTON KOCHIS PLLC

Dated: March 7, 2023

By: /s/ Anthony J. Kochis  
 Anthony J. Kochis (P72020)  
 3150 Livernois, Suite 275  
 Troy, MI 48083  
 Telephone: (248) 247-7105  
 Facsimile: (248) 247-7099  
 E-Mail: akochis@wolfsonbolton.com

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**CERTIFICATE OF SERVICE**

I certify that, on March 7, 2023, I caused the *Liquidating Trustee's Application To Employ O'Keefe & Associates Consulting, LLC For Litigation Support Services* to be electronically filed with the Clerk of the Court using the ECF system, which sent notification of such filing to all ECF participants requesting electronic service, including the following:

Danielle Allison-Yokom on behalf of Creditor Michigan Department of Environment, Great Lakes, and Energy

[allison.yokom@Michigan.gov](mailto:allison.yokom@Michigan.gov),  
[WierengaJ1@michigan.gov](mailto:WierengaJ1@michigan.gov); [GibsonJ16@michigan.gov](mailto:GibsonJ16@michigan.gov)

Danielle Allison-Yokom on behalf of Creditor Michigan Department of Natural Resources

[allison.yokom@Michigan.gov](mailto:allison.yokom@Michigan.gov),  
[WierengaJ1@michigan.gov](mailto:WierengaJ1@michigan.gov); [GibsonJ16@michigan.gov](mailto:GibsonJ16@michigan.gov)

Sharon S. Almonrode on behalf of Creditor Sanford Hardware 1, LLC  
[ssa@millerlawpc.com](mailto:ssa@millerlawpc.com), [aad@millerlawpc.com](mailto:aad@millerlawpc.com); [gam@millerlawpc.com](mailto:gam@millerlawpc.com)

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Sharon S. Almonrode on behalf of Creditor Cassandra Colley  
[ssa@millerlawpc.com](mailto:ssa@millerlawpc.com), [aad@millerlawpc.com](mailto:aad@millerlawpc.com); [gam@millerlawpc.com](mailto:gam@millerlawpc.com)

Sharon S. Almonrode on behalf of Creditor Charles Colley  
[ssa@millerlawpc.com](mailto:ssa@millerlawpc.com), [aad@millerlawpc.com](mailto:aad@millerlawpc.com); [gam@millerlawpc.com](mailto:gam@millerlawpc.com)

Sharon S. Almonrode on behalf of Creditor Matthew S. Smith  
[ssa@millerlawpc.com](mailto:ssa@millerlawpc.com), [aad@millerlawpc.com](mailto:aad@millerlawpc.com); [gam@millerlawpc.com](mailto:gam@millerlawpc.com)

Sharon S. Almonrode on behalf of Creditor Michael Mercer  
[ssa@millerlawpc.com](mailto:ssa@millerlawpc.com), [aad@millerlawpc.com](mailto:aad@millerlawpc.com); [gam@millerlawpc.com](mailto:gam@millerlawpc.com)

Rebekah L. Bailey on behalf of Creditor Cable Class Plaintiffs  
[bailey@nka.com](mailto:bailey@nka.com)

Jason W. Bank on behalf of Defendant U.S. Bank National Association  
[jbank@kerr-russell.com](mailto:jbank@kerr-russell.com), [ssmith@kerr-russell.com](mailto:ssmith@kerr-russell.com)

Michael E. Baum on behalf of Creditor Holly Johnson  
[mbaum@schaferandweiner.com](mailto:mbaum@schaferandweiner.com),  
[jburns@schaferandweiner.com](mailto:jburns@schaferandweiner.com); [nmack@schaferandweiner.com](mailto:nmack@schaferandweiner.com)

Michael E. Baum on behalf of Creditor Holly Kovacs  
[mbaum@schaferandweiner.com](mailto:mbaum@schaferandweiner.com),  
[jburns@schaferandweiner.com](mailto:jburns@schaferandweiner.com); [nmack@schaferandweiner.com](mailto:nmack@schaferandweiner.com)

Michael E. Baum on behalf of Creditor Kimberly Borchard  
[mbaum@schaferandweiner.com](mailto:mbaum@schaferandweiner.com),  
[jburns@schaferandweiner.com](mailto:jburns@schaferandweiner.com); [nmack@schaferandweiner.com](mailto:nmack@schaferandweiner.com)

Michael E. Baum on behalf of Creditor Robert Woods  
[mbaum@schaferandweiner.com](mailto:mbaum@schaferandweiner.com),  
[jburns@schaferandweiner.com](mailto:jburns@schaferandweiner.com); [nmack@schaferandweiner.com](mailto:nmack@schaferandweiner.com)

Michael E. Baum on behalf of Creditor Timothy D. Dana  
[mbaum@schaferandweiner.com](mailto:mbaum@schaferandweiner.com),  
[jburns@schaferandweiner.com](mailto:jburns@schaferandweiner.com); [nmack@schaferandweiner.com](mailto:nmack@schaferandweiner.com)

Kimberly Bedigian on behalf of Creditor Sanford Hardware 1, LLC

[kbedigian@sbplclaw.com](mailto:kbedigian@sbplclaw.com)

Kimberly Bedigian on behalf of Creditor The Mass Coalition  
[kbedigian@sbplclaw.com](mailto:kbedigian@sbplclaw.com)

Kimberly Bedigian on behalf of Creditor Cassandra Colley  
[kbedigian@sbplclaw.com](mailto:kbedigian@sbplclaw.com)

Kimberly Bedigian on behalf of Creditor Charles Colley  
[kbedigian@sbplclaw.com](mailto:kbedigian@sbplclaw.com)

Kimberly Bedigian on behalf of Creditor Matthew S. Smith  
[kbedigian@sbplclaw.com](mailto:kbedigian@sbplclaw.com)

Kimberly Bedigian on behalf of Creditor Michael Mercer  
[kbedigian@sbplclaw.com](mailto:kbedigian@sbplclaw.com)

Jayson E. Blake on behalf of Creditor Alicia Mrdutt  
[jeblake@mcalpinepc.com](mailto:jeblake@mcalpinepc.com), [mlmcalpine@mcalpinepc.com](mailto:mlmcalpine@mcalpinepc.com)

Jayson E. Blake on behalf of Creditor Dana Ralko  
[jeblake@mcalpinepc.com](mailto:jeblake@mcalpinepc.com), [mlmcalpine@mcalpinepc.com](mailto:mlmcalpine@mcalpinepc.com)

Jayson E. Blake on behalf of Creditor David Phillips  
[jeblake@mcalpinepc.com](mailto:jeblake@mcalpinepc.com), [mlmcalpine@mcalpinepc.com](mailto:mlmcalpine@mcalpinepc.com)

Jayson E. Blake on behalf of Creditor James Mrdutt  
[jeblake@mcalpinepc.com](mailto:jeblake@mcalpinepc.com), [mlmcalpine@mcalpinepc.com](mailto:mlmcalpine@mcalpinepc.com)

Jayson E. Blake on behalf of Creditor Joe Bruneau  
[jeblake@mcalpinepc.com](mailto:jeblake@mcalpinepc.com), [mlmcalpine@mcalpinepc.com](mailto:mlmcalpine@mcalpinepc.com)

Jayson E. Blake on behalf of Creditor Mary Randall  
[jeblake@mcalpinepc.com](mailto:jeblake@mcalpinepc.com), [mlmcalpine@mcalpinepc.com](mailto:mlmcalpine@mcalpinepc.com)

Jayson E. Blake on behalf of Creditor Osro Randall  
[jeblake@mcalpinepc.com](mailto:jeblake@mcalpinepc.com), [mlmcalpine@mcalpinepc.com](mailto:mlmcalpine@mcalpinepc.com)

Jayson E. Blake on behalf of Creditor Patty Ralko  
[jeblake@mcalpinepc.com](mailto:jeblake@mcalpinepc.com), [mlmcalpine@mcalpinepc.com](mailto:mlmcalpine@mcalpinepc.com)

Ian S. Bolton on behalf of Creditor Karl Kacel  
[ianboltonlaw@gmail.com](mailto:ianboltonlaw@gmail.com), [barbie51766@gmail.com](mailto:barbie51766@gmail.com)

Howard M. Borin on behalf of Creditor Holly Johnson  
[hborin@schaferandweiner.com](mailto:hborin@schaferandweiner.com),  
[jburns@schaferandweiner.com](mailto:jburns@schaferandweiner.com); [nmack@schaferandweiner.com](mailto:nmack@schaferandweiner.com)

Howard M. Borin on behalf of Creditor Holly Kovacs  
[hborin@schaferandweiner.com](mailto:hborin@schaferandweiner.com),  
[jburns@schaferandweiner.com](mailto:jburns@schaferandweiner.com); [nmack@schaferandweiner.com](mailto:nmack@schaferandweiner.com)

Howard M. Borin on behalf of Creditor Kimberly Borchard  
[hborin@schaferandweiner.com](mailto:hborin@schaferandweiner.com),  
[jburns@schaferandweiner.com](mailto:jburns@schaferandweiner.com); [nmack@schaferandweiner.com](mailto:nmack@schaferandweiner.com)

Howard M. Borin on behalf of Creditor Robert Woods  
[hborin@schaferandweiner.com](mailto:hborin@schaferandweiner.com),  
[jburns@schaferandweiner.com](mailto:jburns@schaferandweiner.com); [nmack@schaferandweiner.com](mailto:nmack@schaferandweiner.com)

Howard M. Borin on behalf of Creditor Timothy D. Dana  
[hborin@schaferandweiner.com](mailto:hborin@schaferandweiner.com),  
[jburns@schaferandweiner.com](mailto:jburns@schaferandweiner.com); [nmack@schaferandweiner.com](mailto:nmack@schaferandweiner.com)

Charles D. Bullock on behalf of Creditor Sanford Hardware 1, LLC  
[cbullock@sbplclaw.com](mailto:cbullock@sbplclaw.com), [lhaas@sbplclaw.com](mailto:lhaas@sbplclaw.com)

Charles D. Bullock on behalf of Creditor The Mass Coalition  
[cbullock@sbplclaw.com](mailto:cbullock@sbplclaw.com), [lhaas@sbplclaw.com](mailto:lhaas@sbplclaw.com)

Charles D. Bullock on behalf of Creditor Adam Riggie  
[cbullock@sbplclaw.com](mailto:cbullock@sbplclaw.com), [lhaas@sbplclaw.com](mailto:lhaas@sbplclaw.com)

Charles D. Bullock on behalf of Creditor Adrian Wise  
[cbullock@sbplclaw.com](mailto:cbullock@sbplclaw.com), [lhaas@sbplclaw.com](mailto:lhaas@sbplclaw.com)

Charles D. Bullock on behalf of Creditor Amy Kaylor  
[cbullock@sbplclaw.com](mailto:cbullock@sbplclaw.com), [lhaas@sbplclaw.com](mailto:lhaas@sbplclaw.com)

Charles D. Bullock on behalf of Creditor Cassandra Colley

[cbullock@sbplclaw.com](mailto:cbullock@sbplclaw.com), [lhaas@sbplclaw.com](mailto:lhaas@sbplclaw.com)

Charles D. Bullock on behalf of Creditor Charles Colley  
[cbullock@sbplclaw.com](mailto:cbullock@sbplclaw.com), [lhaas@sbplclaw.com](mailto:lhaas@sbplclaw.com)

Charles D. Bullock on behalf of Creditor Jeffrey Kaylor  
[cbullock@sbplclaw.com](mailto:cbullock@sbplclaw.com), [lhaas@sbplclaw.com](mailto:lhaas@sbplclaw.com)

Charles D. Bullock on behalf of Creditor Jillian Wise  
[cbullock@sbplclaw.com](mailto:cbullock@sbplclaw.com), [lhaas@sbplclaw.com](mailto:lhaas@sbplclaw.com)

Charles D. Bullock on behalf of Creditor Matthew S. Smith  
[cbullock@sbplclaw.com](mailto:cbullock@sbplclaw.com), [lhaas@sbplclaw.com](mailto:lhaas@sbplclaw.com)

Charles D. Bullock on behalf of Creditor Michael Mercer  
[cbullock@sbplclaw.com](mailto:cbullock@sbplclaw.com), [lhaas@sbplclaw.com](mailto:lhaas@sbplclaw.com)

Jacob Carlton on behalf of Creditor Mike and Lisa McGaugh  
[carltonj@millerjohnson.com](mailto:carltonj@millerjohnson.com),  
[9688700420@filings.docketbird.com](mailto:9688700420@filings.docketbird.com); [ecfpigginsj@millerjohnson.com](mailto:ecfpigginsj@millerjohnson.com)

Philip T. Carroll on behalf of Creditor Allianz Global Corporate & Specialty SE  
[pcarroll@cozen.com](mailto:pcarroll@cozen.com),  
[jgoeing@cozen.com](mailto:jgoeing@cozen.com); [mpolicastro@cozen.com](mailto:mpolicastro@cozen.com); [philip-carroll-5601@ecf.pacerpro.com](mailto:philip-carroll-5601@ecf.pacerpro.com)

Philip T. Carroll on behalf of Creditor American Bankers Insurance Company of Florida  
[pcarroll@cozen.com](mailto:pcarroll@cozen.com),  
[jgoeing@cozen.com](mailto:jgoeing@cozen.com); [mpolicastro@cozen.com](mailto:mpolicastro@cozen.com); [philip-carroll-5601@ecf.pacerpro.com](mailto:philip-carroll-5601@ecf.pacerpro.com)

Philip T. Carroll on behalf of Creditor American Security Insurance Company  
[pcarroll@cozen.com](mailto:pcarroll@cozen.com),  
[jgoeing@cozen.com](mailto:jgoeing@cozen.com); [mpolicastro@cozen.com](mailto:mpolicastro@cozen.com); [philip-carroll-5601@ecf.pacerpro.com](mailto:philip-carroll-5601@ecf.pacerpro.com)

Philip T. Carroll on behalf of Creditor American Strategic Insurance

Corporation

[pcarroll@cozen.com](mailto:pcarroll@cozen.com),  
[jgoeing@cozen.com](mailto:jgoeing@cozen.com); [mpolicastro@cozen.com](mailto:mpolicastro@cozen.com); [philip-carroll-5601@ecf.pacerpro.com](mailto:philip-carroll-5601@ecf.pacerpro.com)

Philip T. Carroll on behalf of Creditor Frankenmuth Mutual Insurance Company

[pcarroll@cozen.com](mailto:pcarroll@cozen.com),  
[jgoeing@cozen.com](mailto:jgoeing@cozen.com); [mpolicastro@cozen.com](mailto:mpolicastro@cozen.com); [philip-carroll-5601@ecf.pacerpro.com](mailto:philip-carroll-5601@ecf.pacerpro.com)

Philip T. Carroll on behalf of Creditor Great American Insurance Company of New York

[pcarroll@cozen.com](mailto:pcarroll@cozen.com),  
[jgoeing@cozen.com](mailto:jgoeing@cozen.com); [mpolicastro@cozen.com](mailto:mpolicastro@cozen.com); [philip-carroll-5601@ecf.pacerpro.com](mailto:philip-carroll-5601@ecf.pacerpro.com)

Philip T. Carroll on behalf of Creditor Hiscox Syndicates Limited

[pcarroll@cozen.com](mailto:pcarroll@cozen.com),  
[jgoeing@cozen.com](mailto:jgoeing@cozen.com); [mpolicastro@cozen.com](mailto:mpolicastro@cozen.com); [philip-carroll-5601@ecf.pacerpro.com](mailto:philip-carroll-5601@ecf.pacerpro.com)

Philip T. Carroll on behalf of Creditor Liberty Mutual Insurance Company

[pcarroll@cozen.com](mailto:pcarroll@cozen.com),  
[jgoeing@cozen.com](mailto:jgoeing@cozen.com); [mpolicastro@cozen.com](mailto:mpolicastro@cozen.com); [philip-carroll-5601@ecf.pacerpro.com](mailto:philip-carroll-5601@ecf.pacerpro.com)

Philip T. Carroll on behalf of Creditor Progressive Marathon Insurance Company

[pcarroll@cozen.com](mailto:pcarroll@cozen.com),  
[jgoeing@cozen.com](mailto:jgoeing@cozen.com); [mpolicastro@cozen.com](mailto:mpolicastro@cozen.com); [philip-carroll-5601@ecf.pacerpro.com](mailto:philip-carroll-5601@ecf.pacerpro.com)

Philip T. Carroll on behalf of Creditor Progressive Michigan Insurance Company

[pcarroll@cozen.com](mailto:pcarroll@cozen.com),  
[jgoeing@cozen.com](mailto:jgoeing@cozen.com); [mpolicastro@cozen.com](mailto:mpolicastro@cozen.com); [philip-carroll-5601@ecf.pacerpro.com](mailto:philip-carroll-5601@ecf.pacerpro.com)

Philip T. Carroll on behalf of Creditor Safeco Insurance Company

[pcarroll@cozen.com](mailto:pcarroll@cozen.com),  
[jgoeing@cozen.com](mailto:jgoeing@cozen.com); [mpolicastro@cozen.com](mailto:mpolicastro@cozen.com); [philip-carroll-5601@ecf.pacerpro.com](mailto:philip-carroll-5601@ecf.pacerpro.com)

Philip T. Carroll on behalf of Creditor State Farm Mutual Automobile Insurance Company  
[pcarroll@cozen.com](mailto:pcarroll@cozen.com),  
[jgoeing@cozen.com](mailto:jgoeing@cozen.com); [mpolicastro@cozen.com](mailto:mpolicastro@cozen.com); [philip-carroll-5601@ecf.pacerpro.com](mailto:philip-carroll-5601@ecf.pacerpro.com)

Philip T. Carroll on behalf of Creditor Westport Insurance Corporation  
[pcarroll@cozen.com](mailto:pcarroll@cozen.com),  
[jgoeing@cozen.com](mailto:jgoeing@cozen.com); [mpolicastro@cozen.com](mailto:mpolicastro@cozen.com); [philip-carroll-5601@ecf.pacerpro.com](mailto:philip-carroll-5601@ecf.pacerpro.com)

Kimberly Ross Clayson on behalf of Defendant The Kogan Law Group, P.C.  
[kclayson@taftlaw.com](mailto:kclayson@taftlaw.com), [ttorni@taftlaw.com](mailto:ttorni@taftlaw.com)

Elliot G. Crowder on behalf of Creditor Sanford Hardware 1, LLC  
[ecrowder@sbplclaw.com](mailto:ecrowder@sbplclaw.com), [lhaas@sbplclaw.com](mailto:lhaas@sbplclaw.com)

Elliot G. Crowder on behalf of Creditor The Mass Coalition  
[ecrowder@sbplclaw.com](mailto:ecrowder@sbplclaw.com), [lhaas@sbplclaw.com](mailto:lhaas@sbplclaw.com)

Elliot G. Crowder on behalf of Creditor Adam Riggie  
[ecrowder@sbplclaw.com](mailto:ecrowder@sbplclaw.com), [lhaas@sbplclaw.com](mailto:lhaas@sbplclaw.com)

Elliot G. Crowder on behalf of Creditor Adrian Wise  
[ecrowder@sbplclaw.com](mailto:ecrowder@sbplclaw.com), [lhaas@sbplclaw.com](mailto:lhaas@sbplclaw.com)

Elliot G. Crowder on behalf of Creditor Amy Kaylor  
[ecrowder@sbplclaw.com](mailto:ecrowder@sbplclaw.com), [lhaas@sbplclaw.com](mailto:lhaas@sbplclaw.com)

Elliot G. Crowder on behalf of Creditor Cassandra Colley  
[ecrowder@sbplclaw.com](mailto:ecrowder@sbplclaw.com), [lhaas@sbplclaw.com](mailto:lhaas@sbplclaw.com)

Elliot G. Crowder on behalf of Creditor Charles Colley  
[ecrowder@sbplclaw.com](mailto:ecrowder@sbplclaw.com), [lhaas@sbplclaw.com](mailto:lhaas@sbplclaw.com)

Elliot G. Crowder on behalf of Creditor Jeffrey Kaylor  
[ecrowder@sbplclaw.com](mailto:ecrowder@sbplclaw.com), [lhaas@sbplclaw.com](mailto:lhaas@sbplclaw.com)

Elliot G. Crowder on behalf of Creditor Jillian Wise  
[ecrowder@sbplclaw.com](mailto:ecrowder@sbplclaw.com), [lhaas@sbplclaw.com](mailto:lhaas@sbplclaw.com)

Elliot G. Crowder on behalf of Creditor Matthew S. Smith  
[ecrowder@sbplclaw.com](mailto:ecrowder@sbplclaw.com), [lhaas@sbplclaw.com](mailto:lhaas@sbplclaw.com)

Elliot G. Crowder on behalf of Creditor Michael Mercer  
[ecrowder@sbplclaw.com](mailto:ecrowder@sbplclaw.com), [lhaas@sbplclaw.com](mailto:lhaas@sbplclaw.com)

David Dubin on behalf of Creditor Debra Kroening  
[ddubin@ldclassaction.com](mailto:ddubin@ldclassaction.com)

Nathan A. Gambill on behalf of Creditor Michigan Department of Environment, Great Lakes, and Energy  
[GambillN@michigan.gov](mailto:GambillN@michigan.gov),  
[WierengaJ1@michigan.gov;Gibson16@michigan.gov](mailto:WierengaJ1@michigan.gov;Gibson16@michigan.gov)

Nathan A. Gambill on behalf of Creditor Michigan Department of Natural Resources  
[GambillN@michigan.gov](mailto:GambillN@michigan.gov),  
[WierengaJ1@michigan.gov;Gibson16@michigan.gov](mailto:WierengaJ1@michigan.gov;Gibson16@michigan.gov)

Celeste R. Gill on behalf of Creditor Michigan Department of Environment, Great Lakes, and Energy  
[gillc1@michigan.gov](mailto:gillc1@michigan.gov), [WierengaJ1@michigan.gov](mailto:WierengaJ1@michigan.gov)

Celeste R. Gill on behalf of Creditor Michigan Department of Natural Resources  
[gillc1@michigan.gov](mailto:gillc1@michigan.gov), [WierengaJ1@michigan.gov](mailto:WierengaJ1@michigan.gov)

Rozanne M. Giunta on behalf of Creditor Four Lakes Task Force  
[rgiunta@wnj.com](mailto:rgiunta@wnj.com),  
[scardinal@wnj.com;GuintaRR81911@notify.bestcase.com](mailto:scardinal@wnj.com;GuintaRR81911@notify.bestcase.com)

Paul R. Hage on behalf of Defendant The Kogan Law Group, P.C.  
[phage@taftlaw.com](mailto:phage@taftlaw.com), [ttorni@taftlaw.com](mailto:ttorni@taftlaw.com)

Robert J. Hahn on behalf of Creditor Gladwin County  
[rjhahn@cmda-law.com](mailto:rjhahn@cmda-law.com), [kueberroth@cmda-law.com](mailto:kueberroth@cmda-law.com); [bmccarty@cmda-law.com](mailto:bmccarty@cmda-law.com)

Robert J. Hahn on behalf of Creditor Midland County  
[rjhahn@cmda-law.com](mailto:rjhahn@cmda-law.com), [kueberroth@cmda-law.com](mailto:kueberroth@cmda-law.com); [bmccarty@cmda-law.com](mailto:bmccarty@cmda-law.com)

Ernest Hassan on behalf of Creditor Sanford Hardware 1, LLC  
[ehassan@sbplclaw.com](mailto:ehassan@sbplclaw.com), [lhaas@sbplclaw.com](mailto:lhaas@sbplclaw.com)

Ernest Hassan on behalf of Creditor Cassandra Colley  
[ehassan@sbplclaw.com](mailto:ehassan@sbplclaw.com), [lhaas@sbplclaw.com](mailto:lhaas@sbplclaw.com)

Ernest Hassan on behalf of Creditor Charles Colley  
[ehassan@sbplclaw.com](mailto:ehassan@sbplclaw.com), [lhaas@sbplclaw.com](mailto:lhaas@sbplclaw.com)

Ernest Hassan on behalf of Creditor Matthew S. Smith  
[ehassan@sbplclaw.com](mailto:ehassan@sbplclaw.com), [lhaas@sbplclaw.com](mailto:lhaas@sbplclaw.com)

Ernest Hassan on behalf of Creditor Michael Mercer  
[ehassan@sbplclaw.com](mailto:ehassan@sbplclaw.com), [lhaas@sbplclaw.com](mailto:lhaas@sbplclaw.com)

Ronna G. Jackson on behalf of U.S. Trustee Andrew R. Vara  
[Ronna.G.Jackson@usdoj.gov](mailto:Ronna.G.Jackson@usdoj.gov)

Henry L. Knier, Jr. on behalf of Creditor Gerace Construction Company  
[bankruptcy@smpklaw.com](mailto:bankruptcy@smpklaw.com), [hknier@smpklaw.com](mailto:hknier@smpklaw.com)

Anthony J. Kochis on behalf of Accountant Thomas A. Risi  
[akochis@wolfsonbolton.com](mailto:akochis@wolfsonbolton.com), [stravis@wolfsonbolton.com](mailto:stravis@wolfsonbolton.com)

Anthony J. Kochis on behalf of Liquidating Trustee Scott A. Wolfson  
[akochis@wolfsonbolton.com](mailto:akochis@wolfsonbolton.com), [stravis@wolfsonbolton.com](mailto:stravis@wolfsonbolton.com)

Anthony J. Kochis on behalf of Other Professional Stretto  
[akochis@wolfsonbolton.com](mailto:akochis@wolfsonbolton.com), [stravis@wolfsonbolton.com](mailto:stravis@wolfsonbolton.com)

Anthony J. Kochis on behalf of Plaintiff Scott A. Wolfson  
[akochis@wolfsonbolton.com](mailto:akochis@wolfsonbolton.com), [stravis@wolfsonbolton.com](mailto:stravis@wolfsonbolton.com)

Anthony J. Kochis on behalf of Special Counsel H. Adam Cohen  
[akochis@wolfsonbolton.com](mailto:akochis@wolfsonbolton.com), [stravis@wolfsonbolton.com](mailto:stravis@wolfsonbolton.com)

Lawrence A Kogan on behalf of Creditor Lee Mueller  
[lkogan@koganlawgroup.com](mailto:lkogan@koganlawgroup.com)

Lawrence A Kogan on behalf of Creditor Michele Mueller  
[lkogan@koganlawgroup.com](mailto:lkogan@koganlawgroup.com)

Scott Kwiatkowski on behalf of Creditor Homrich Edenville Dam Class Plaintiffs  
[scott@bk-lawyer.net](mailto:scott@bk-lawyer.net)

Jonathan E. Lauderbach on behalf of Creditor Four Lakes Task Force  
[jlauderbach@wnj.com](mailto:jlauderbach@wnj.com)

Jonathan E. Lauderbach on behalf of Creditor Gerace Construction Company  
[jlauderbach@wnj.com](mailto:jlauderbach@wnj.com)

Michael D. Lieberman on behalf of Creditor Adam Riggie  
[MLieberman@lipsonneilson.com](mailto:MLieberman@lipsonneilson.com),  
[LOMeara@lipsonneilson.com;Mlieberman6160@yahoo.com](mailto:LOMeara@lipsonneilson.com;Mlieberman6160@yahoo.com)

Michael D. Lieberman on behalf of Creditor Adrian Wise  
[MLieberman@lipsonneilson.com](mailto:MLieberman@lipsonneilson.com),  
[LOMeara@lipsonneilson.com;Mlieberman6160@yahoo.com](mailto:LOMeara@lipsonneilson.com;Mlieberman6160@yahoo.com)

Michael D. Lieberman on behalf of Creditor Amy Kaylor  
[MLieberman@lipsonneilson.com](mailto:MLieberman@lipsonneilson.com),  
[LOMeara@lipsonneilson.com;Mlieberman6160@yahoo.com](mailto:LOMeara@lipsonneilson.com;Mlieberman6160@yahoo.com)

Michael D. Lieberman on behalf of Creditor Jeffrey Kaylor  
[MLieberman@lipsonneilson.com](mailto:MLieberman@lipsonneilson.com),  
[LOMeara@lipsonneilson.com;Mlieberman6160@yahoo.com](mailto:LOMeara@lipsonneilson.com;Mlieberman6160@yahoo.com)

Michael D. Lieberman on behalf of Creditor Jillian Wise  
[MLieberman@lipsonneilson.com](mailto:MLieberman@lipsonneilson.com),  
[LOMeara@lipsonneilson.com;Mlieberman6160@yahoo.com](mailto:LOMeara@lipsonneilson.com;Mlieberman6160@yahoo.com)

Leon N. Mayer on behalf of Creditor Holly Johnson  
[lnmayer@schaferandweiner.com](mailto:lnmayer@schaferandweiner.com), [lfernandez@schaferandweiner.com](mailto:lfernandez@schaferandweiner.com)

Leon N. Mayer on behalf of Creditor Holly Kovacs  
[lnmayer@schaferandweiner.com](mailto:lnmayer@schaferandweiner.com), [lfernandez@schaferandweiner.com](mailto:lfernandez@schaferandweiner.com)

Leon N. Mayer on behalf of Creditor Kimberly Borchard  
[lnmayer@schaferandweiner.com](mailto:lnmayer@schaferandweiner.com), [lfernandez@schaferandweiner.com](mailto:lfernandez@schaferandweiner.com)

Leon N. Mayer on behalf of Creditor Robert Woods  
[lnmayer@schaferandweiner.com](mailto:lnmayer@schaferandweiner.com), [lfernandez@schaferandweiner.com](mailto:lfernandez@schaferandweiner.com)

Leon N. Mayer on behalf of Creditor Timothy D. Dana  
[lnmayer@schaferandweiner.com](mailto:lnmayer@schaferandweiner.com), [lfernandez@schaferandweiner.com](mailto:lfernandez@schaferandweiner.com)

Mark L. McAlpine on behalf of Creditor Alicia Mrdutt  
[mlmcalpine@mcalpinelawfirm.com](mailto:mlmcalpine@mcalpinelawfirm.com), [dajaworski@mcalpinepc.com](mailto:dajaworski@mcalpinepc.com)

Mark L. McAlpine on behalf of Creditor Dana Ralko  
[mlmcalpine@mcalpinelawfirm.com](mailto:mlmcalpine@mcalpinelawfirm.com), [dajaworski@mcalpinepc.com](mailto:dajaworski@mcalpinepc.com)

Mark L. McAlpine on behalf of Creditor David Phillips  
[mlmcalpine@mcalpinelawfirm.com](mailto:mlmcalpine@mcalpinelawfirm.com), [dajaworski@mcalpinepc.com](mailto:dajaworski@mcalpinepc.com)

Mark L. McAlpine on behalf of Creditor James Mrdutt  
[mlmcalpine@mcalpinelawfirm.com](mailto:mlmcalpine@mcalpinelawfirm.com), [dajaworski@mcalpinepc.com](mailto:dajaworski@mcalpinepc.com)

Mark L. McAlpine on behalf of Creditor Joe Bruneau  
[mlmcalpine@mcalpinelawfirm.com](mailto:mlmcalpine@mcalpinelawfirm.com), [dajaworski@mcalpinepc.com](mailto:dajaworski@mcalpinepc.com)

Mark L. McAlpine on behalf of Creditor Mary Randall  
[mlmcalpine@mcalpinelawfirm.com](mailto:mlmcalpine@mcalpinelawfirm.com), [dajaworski@mcalpinepc.com](mailto:dajaworski@mcalpinepc.com)

Mark L. McAlpine on behalf of Creditor Osro Randall  
[mlmcalpine@mcalpinelawfirm.com](mailto:mlmcalpine@mcalpinelawfirm.com), [dajaworski@mcalpinepc.com](mailto:dajaworski@mcalpinepc.com)

Mark L. McAlpine on behalf of Creditor Patty Ralko  
[mlmcalpine@mcalpinelawfirm.com](mailto:mlmcalpine@mcalpinelawfirm.com), [dajaworski@mcalpinepc.com](mailto:dajaworski@mcalpinepc.com)

Matthew E. McClintock on behalf of Debtor In Possession Boyce Hydro Power, LLC  
[MATTM@GOLDMCLAW.COM](mailto:MATTM@GOLDMCLAW.COM),  
[teresag@restructuringshop.com;ericg@goldmclaw.com](mailto:teresag@restructuringshop.com;ericg@goldmclaw.com)

Matthew E. McClintock on behalf of Debtor In Possession Boyce Hydro, LLC  
[MATTM@GOLDMCLAW.COM](mailto:MATTM@GOLDMCLAW.COM),  
[teresag@restructuringshop.com;ericg@goldmclaw.com](mailto:teresag@restructuringshop.com;ericg@goldmclaw.com)

Matthew E. McClintock on behalf of Interested Party Boyce Hydro Power, LLC  
[MATTM@GOLDMCLAW.COM](mailto:MATTM@GOLDMCLAW.COM),  
[teresag@restructuringshop.com;ericg@goldmclaw.com](mailto:teresag@restructuringshop.com;ericg@goldmclaw.com)

Ralph E. McDowell on behalf of Creditor Brad Phillion  
[rmcowell@bodmanlaw.com](mailto:rmcowell@bodmanlaw.com)

Ralph E. McDowell on behalf of Creditor Daryl Zelenak  
[rmcowell@bodmanlaw.com](mailto:rmcowell@bodmanlaw.com)

Ralph E. McDowell on behalf of Creditor Gorgia Masouridis Moore  
[rmcowell@bodmanlaw.com](mailto:rmcowell@bodmanlaw.com)

Ralph E. McDowell on behalf of Creditor Heidi Kidd  
[rmcowell@bodmanlaw.com](mailto:rmcowell@bodmanlaw.com)

Ralph E. McDowell on behalf of Creditor James Beath  
[rmcowell@bodmanlaw.com](mailto:rmcowell@bodmanlaw.com)

Ralph E. McDowell on behalf of Creditor James Paquette  
[rmcowell@bodmanlaw.com](mailto:rmcowell@bodmanlaw.com)

Ralph E. McDowell on behalf of Creditor Michelle Hill  
[rmcowell@bodmanlaw.com](mailto:rmcowell@bodmanlaw.com)

Ralph E. McDowell on behalf of Creditor Mike Callan  
[rmcowell@bodmanlaw.com](mailto:rmcowell@bodmanlaw.com)

Ralph E. McDowell on behalf of Creditor Regan Wieland

[rmcowell@bodmanlaw.com](mailto:rmcowell@bodmanlaw.com)

Ralph E. McDowell on behalf of Creditor Suzette Gay Zelenak  
[rmcowell@bodmanlaw.com](mailto:rmcowell@bodmanlaw.com)

Daniel R Merkle on behalf of Creditor Stephen Hultberg  
[danm@msfseattle.com](mailto:danm@msfseattle.com)

Daniel R Merkle on behalf of Defendant Helen's Holdings, LLC  
[danm@msfseattle.com](mailto:danm@msfseattle.com)

Matthew Hale Morgan on behalf of Creditor Cable Class Plaintiffs  
[morgan@nka.com](mailto:morgan@nka.com)

Bruce N. Moss on behalf of Creditor Affiliated FM Insurance Company  
[bmooss@dt-law.com](mailto:bmooss@dt-law.com)

Bruce N. Moss on behalf of Creditor Altman Management, LLC  
[bmooss@dt-law.com](mailto:bmooss@dt-law.com)

Bruce N. Moss on behalf of Creditor American Guarantee and Liability Insurance Company  
[bmooss@dt-law.com](mailto:bmooss@dt-law.com)

Bruce N. Moss on behalf of Creditor Axis Surplus  
[bmooss@dt-law.com](mailto:bmooss@dt-law.com)

Bruce N. Moss on behalf of Creditor Certain Underwriters-Lloyd's  
[bmooss@dt-law.com](mailto:bmooss@dt-law.com)

Bruce N. Moss on behalf of Creditor Certain Underwriters-Lloyd's-DNAPF006484-00-Tri-City  
[bmooss@dt-law.com](mailto:bmooss@dt-law.com)

Bruce N. Moss on behalf of Creditor Certain Underwriters-Lloyd's-MIFL00631003-Michels  
[bmooss@dt-law.com](mailto:bmooss@dt-law.com)

Bruce N. Moss on behalf of Creditor Certain Underwriters-Lloyd's-NCIP303385-2020-Reaume

[bmooss@dt-law.com](mailto:bmooss@dt-law.com)

Bruce N. Moss on behalf of Creditor Certain Underwriters-Lloyd's-  
NCIP407517-2019-Harris

[bmooss@dt-law.com](mailto:bmooss@dt-law.com)

Bruce N. Moss on behalf of Creditor Certain Underwriters-Lloyd's-  
NCIP427616-2019-Gehrckhe

[bmooss@dt-law.com](mailto:bmooss@dt-law.com)

Bruce N. Moss on behalf of Creditor Certain Underwriters-Lloyd's-  
NCIP576330-2019-Sprague

[bmooss@dt-law.com](mailto:bmooss@dt-law.com)

Bruce N. Moss on behalf of Creditor Certain Underwriters-Lloyd's-  
NCIP616384-Thomas

[bmooss@dt-law.com](mailto:bmooss@dt-law.com)

Bruce N. Moss on behalf of Creditor Certain Underwriters-Lloyd's-  
NCIP648136-2019-Chad

[bmooss@dt-law.com](mailto:bmooss@dt-law.com)

Bruce N. Moss on behalf of Creditor Certain Underwriters-Lloyd's-  
NCIP660734-2019-Huver

[bmooss@dt-law.com](mailto:bmooss@dt-law.com)

Bruce N. Moss on behalf of Creditor Certain Underwriters-Lloyd's-  
NCIP750302-Kabat

[bmooss@dt-law.com](mailto:bmooss@dt-law.com)

Bruce N. Moss on behalf of Creditor Certain Underwriters-Lloyd's-  
NCIP807996-2020-Michael

[bmooss@dt-law.com](mailto:bmooss@dt-law.com)

Bruce N. Moss on behalf of Creditor Certain Underwriters-Lloyd's-  
NCIP823658-Lynch

[bmooss@dt-law.com](mailto:bmooss@dt-law.com)

Bruce N. Moss on behalf of Creditor Certain Underwriters-Lloyd's-  
NCIP844682-2020-Neiman

[bmooss@dt-law.com](mailto:bmooss@dt-law.com)

Bruce N. Moss on behalf of Creditor Certain Underwriters-Lloyd's-NIP878669-Parsons  
[bmooss@dt-law.com](mailto:bmooss@dt-law.com)

Bruce N. Moss on behalf of Creditor Certain Underwriters-Lloyd's-VPC-CN0000010-05-Altman  
[bmooss@dt-law.com](mailto:bmooss@dt-law.com)

Bruce N. Moss on behalf of Creditor Citizens Insurance Company of America  
[bmooss@dt-law.com](mailto:bmooss@dt-law.com)

Bruce N. Moss on behalf of Creditor Citizens Insurance Company of Midwest  
[bmooss@dt-law.com](mailto:bmooss@dt-law.com)

Bruce N. Moss on behalf of Creditor Conifer Insurance Company  
[bmooss@dt-law.com](mailto:bmooss@dt-law.com)

Bruce N. Moss on behalf of Creditor Dairyland Insurance Company  
[bmooss@dt-law.com](mailto:bmooss@dt-law.com)

Bruce N. Moss on behalf of Creditor Essentia Insurance Company  
[bmooss@dt-law.com](mailto:bmooss@dt-law.com)

Bruce N. Moss on behalf of Creditor Factory Mutual Insurance Company  
[bmooss@dt-law.com](mailto:bmooss@dt-law.com)

Bruce N. Moss on behalf of Creditor Farm Bureau General Insurance Company of Michigan  
[bmooss@dt-law.com](mailto:bmooss@dt-law.com)

Bruce N. Moss on behalf of Creditor Florists Mutual Insurance Company Hortica  
[bmooss@dt-law.com](mailto:bmooss@dt-law.com)

Bruce N. Moss on behalf of Creditor Hastings Mutual Insurance Co.  
[bmooss@dt-law.com](mailto:bmooss@dt-law.com)

Bruce N. Moss on behalf of Creditor Houston Casualty Company  
[bmooss@dt-law.com](mailto:bmooss@dt-law.com)

Bruce N. Moss on behalf of Creditor Independent Specialty Insurance Company  
[bmooss@dt-law.com](mailto:bmooss@dt-law.com)

Bruce N. Moss on behalf of Creditor Indian Harbor Insurance Co.  
[bmooss@dt-law.com](mailto:bmooss@dt-law.com)

Bruce N. Moss on behalf of Creditor Indiana Harbor Insurance Co.  
[bmooss@dt-law.com](mailto:bmooss@dt-law.com)

Bruce N. Moss on behalf of Creditor Interstate Fire & Casualty Company  
[bmooss@dt-law.com](mailto:bmooss@dt-law.com)

Bruce N. Moss on behalf of Creditor Lexington Insurance Company  
[bmooss@dt-law.com](mailto:bmooss@dt-law.com)

Bruce N. Moss on behalf of Creditor MEEMIC Insurance Company  
[bmooss@dt-law.com](mailto:bmooss@dt-law.com)

Bruce N. Moss on behalf of Creditor National Fire & Marine Insurance  
[bmooss@dt-law.com](mailto:bmooss@dt-law.com)

Bruce N. Moss on behalf of Creditor Pioneer Mutual Insurance Company  
[bmooss@dt-law.com](mailto:bmooss@dt-law.com)

Bruce N. Moss on behalf of Creditor Princeton Excess and Surplus Lines Insurance Company  
[bmooss@dt-law.com](mailto:bmooss@dt-law.com)

Bruce N. Moss on behalf of Creditor Telephone & Data Systems, Inc.  
[bmooss@dt-law.com](mailto:bmooss@dt-law.com)

Bruce N. Moss on behalf of Creditor Trisura Specialty Insurance Company  
[bmooss@dt-law.com](mailto:bmooss@dt-law.com)

Bruce N. Moss on behalf of Creditor United Specialty Insurance Company  
[bmooss@dt-law.com](mailto:bmooss@dt-law.com)

Bruce N. Moss on behalf of Creditor Zurich American Insurance Company  
[bmooss@dt-law.com](mailto:bmooss@dt-law.com)

Barbara A. Patek on behalf of Creditor Adam Riggie  
[pateklaw@gmail.com](mailto:pateklaw@gmail.com)

Barbara A. Patek on behalf of Creditor Adrian Wise  
[pateklaw@gmail.com](mailto:pateklaw@gmail.com)

Barbara A. Patek on behalf of Creditor Amy Kaylor  
[pateklaw@gmail.com](mailto:pateklaw@gmail.com)

Barbara A. Patek on behalf of Creditor Jeffrey Kaylor  
[pateklaw@gmail.com](mailto:pateklaw@gmail.com)

Barbara A. Patek on behalf of Creditor Jillian Wise  
[pateklaw@gmail.com](mailto:pateklaw@gmail.com)

John T. Piggins on behalf of Creditor Mike and Lisa McGaugh  
[ecfpiggins@millerjohnson.com](mailto:ecfpiggins@millerjohnson.com),  
[pigginsj@millerjohnson.com;8473902420@filings.docketbird.com](mailto:pigginsj@millerjohnson.com;8473902420@filings.docketbird.com)

Kelsey A. Postema on behalf of Liquidating Trustee Scott A. Wolfson  
[kpostema@wolfsonbolton.com](mailto:kpostema@wolfsonbolton.com)

David L. Powers on behalf of Creditor Gerace Construction Company  
[dpowers@smpklaw.com](mailto:dpowers@smpklaw.com), [arex@smpklaw.com](mailto:arex@smpklaw.com); [shougaard@smpklaw.com](mailto:shougaard@smpklaw.com)

David Lawrence Puskar on behalf of Creditor City of Midland  
[davpus@braunkendrick.com](mailto:davpus@braunkendrick.com),  
[brierei@braunkendrick.com](mailto:brierei@braunkendrick.com); [kelspe@braunkendrick.com](mailto:kelspe@braunkendrick.com)

David Lawrence Puskar on behalf of Creditor Pat's Gradall Service, Inc.  
[davpus@braunkendrick.com](mailto:davpus@braunkendrick.com),  
[brierei@braunkendrick.com](mailto:brierei@braunkendrick.com); [kelspe@braunkendrick.com](mailto:kelspe@braunkendrick.com)

Jeffery Jon Sattler on behalf of Creditor Holly Johnson  
[jsattler@schaferandweiner.com](mailto:jsattler@schaferandweiner.com), [lfernandez@schaferandweiner.com](mailto:lfernandez@schaferandweiner.com)

Jeffery Jon Sattler on behalf of Creditor Holly Kovacs  
[jsattler@schaferandweiner.com](mailto:jsattler@schaferandweiner.com), [lfernandez@schaferandweiner.com](mailto:lfernandez@schaferandweiner.com)

Jeffery Jon Sattler on behalf of Creditor Kimberly Borchard  
[jsattler@schaferandweiner.com](mailto:jsattler@schaferandweiner.com), [lfernandez@schaferandweiner.com](mailto:lfernandez@schaferandweiner.com)

Jeffery Jon Sattler on behalf of Creditor Robert Woods  
[jsattler@schaferandweiner.com](mailto:jsattler@schaferandweiner.com), [lfernandez@schaferandweiner.com](mailto:lfernandez@schaferandweiner.com)

Jeffery Jon Sattler on behalf of Creditor Timothy D. Dana  
[jsattler@schaferandweiner.com](mailto:jsattler@schaferandweiner.com), [lfernandez@schaferandweiner.com](mailto:lfernandez@schaferandweiner.com)

Craig S. Schoenherr, Sr. on behalf of Creditor Ally Bank  
[ecf@orlaw.com](mailto:ecf@orlaw.com)

Mark H. Shapiro on behalf of Trustee Mark H. Shapiro  
[shapiro@steinbergshapiro.com](mailto:shapiro@steinbergshapiro.com), [jbrown@steinbergshapiro.com](mailto:jbrown@steinbergshapiro.com)

Lisa D. Starks on behalf of Creditor Byline Bank  
[lisa.starks@btlaw.com](mailto:lisa.starks@btlaw.com), [Orlanda.Hauff@btlaw.com](mailto:Orlanda.Hauff@btlaw.com)

Andrew C. Thompson on behalf of Creditor Billings Township  
[athompson@pdkg.com](mailto:athompson@pdkg.com), [hgraham@pdkg.com](mailto:hgraham@pdkg.com)

David A. Tilem on behalf of Creditor Lee Mueller  
[DavidTilem@TilemLaw.com](mailto:DavidTilem@TilemLaw.com), [staff@tilemlaw.com](mailto:staff@tilemlaw.com)

David A. Tilem on behalf of Creditor Michele Mueller  
[DavidTilem@TilemLaw.com](mailto:DavidTilem@TilemLaw.com), [staff@tilemlaw.com](mailto:staff@tilemlaw.com)

Edward M Turfe on behalf of Creditor Allstate Fire and Casualty Insurance Company  
[edturfe@turfelaw.com](mailto:edturfe@turfelaw.com)

Edward M Turfe on behalf of Creditor Allstate Indemnity Company  
[edturfe@turfelaw.com](mailto:edturfe@turfelaw.com)

Edward M Turfe on behalf of Creditor Allstate Insurance Company  
[edturfe@turfelaw.com](mailto:edturfe@turfelaw.com)

Edward M Turfe on behalf of Creditor Allstate New Jersey Insurance Company  
[edturfe@turfelaw.com](mailto:edturfe@turfelaw.com)

Edward M Turfe on behalf of Creditor Allstate New Jersey Property and Casualty Insurance Company  
[edturfe@turfelaw.com](mailto:edturfe@turfelaw.com)

Edward M Turfe on behalf of Creditor Allstate Northbrook Indemnity Company  
[edturfe@turfelaw.com](mailto:edturfe@turfelaw.com)

Edward M Turfe on behalf of Creditor Allstate Property and Casualty Insurance Company  
[edturfe@turfelaw.com](mailto:edturfe@turfelaw.com)

Edward M Turfe on behalf of Creditor Allstate Texas Lloyds  
[edturfe@turfelaw.com](mailto:edturfe@turfelaw.com)

Edward M Turfe on behalf of Creditor Allstate Vehicle and Property Insurance Company  
[edturfe@turfelaw.com](mailto:edturfe@turfelaw.com)

Scott A. Wolfson on behalf of Liquidating Trustee Scott A. Wolfson  
[swolfson@wolfsonbolton.com](mailto:swolfson@wolfsonbolton.com), [stravis@wolfsonbolton.com](mailto:stravis@wolfsonbolton.com)

Respectfully submitted,

WOLFSON BOLTON PLLC

Dated: March 7, 2023

By: /s/ Anthony J. Kochis  
Anthony J. Kochis (P72020)  
Kelsey A. Postema (P85428)  
3150 Livernois, Suite 275  
Troy, MI 48083  
Telephone: (248) 247-7105  
Facsimile: (248) 247-7099  
E-Mail: akochis@wolfsonbolton.com

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION – BAY CITY

In re:

BOYCE HYDRO, LLC, et al.

Debtors.<sup>1</sup>

Chapter 11

Case No. 20-21214

Hon. Daniel S. Opperman

**DECLARATION OF PATRICK O'KEEFE IN  
SUPPORT OF LIQUIDATING TRUSTEE'S APPLICATION  
TO EMPLOY O'KEEFE & ASSOCIATES CONSULTING, LLC  
FOR LITIGATION SUPPORT SERVICES**

I, Patrick O'Keefe, state:

1. I am CEO and Managing Director with O'Keefe & Associates Consulting, LLC ("O'Keefe").
2. I am familiar with the facts and circumstances set forth in this Declaration, and I am in all respects competent to make this Declaration in Support of the Application.<sup>2</sup>
3. Unless otherwise stated, this Declaration is based upon my personal knowledge.

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal taxpayer-identification number, are: (i) Boyce Hydro, LLC (6694), Case No. 20-21214 and (ii) Boyce Hydro Power, LLC (3034), Case No. 20-21215.

<sup>2</sup> Capitalized terms used but not defined in this Declaration have the meanings given them in the *Liquidating Trustee's Application To Employ O'Keefe & Associates Consulting, LLC For Litigation Support Services*.

4. To the best of my knowledge as of the date of this Declaration, O'Keefe (a) does not have any connection with Debtors, their affiliates, their creditors, the United States Trustee, any person employed in the office of the United States Trustee, or any other party-in-interest or their respective attorneys and accountants; (b) are "disinterested person[s]," as that term is defined 11 U.S.C. § 101(14); and (c) do not hold or represent an interest adverse to Debtors' estates.

5. More specifically:

- i. None of the professionals of O'Keefe hold or represent an interest adverse to the Debtors' estates.
- ii. Neither O'Keefe, nor any professional of O'Keefe, is or was a creditor, equity holder, or an insider of Debtors.
- iii. Neither O'Keefe, nor any professional of O'Keefe, is or was, within two years before the Petition Date, a director, officer, or employer of any entity owned or operated by the Debtors.

6. I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 6, 2023

Executed in Bloomfield Hills, Michigan

By:   
Patrick O'Keefe

**Scott A. Wolfson, solely in his capacity as  
Liquidating Trustee of the Boyce Hydro  
Liquidating Trust**

**Re: Boyce Hydro, LLC, et al v. The Kogan  
Law Group, P.C.**

**Wolfson Bolton Kochis  
3150 Livernois Rd Suite 275,  
Troy, MI 48083**

**PROFESSIONAL SERVICES AGREEMENT**

**February 27, 2023**

1. **Parties.** O'Keefe & Associates Consulting, LLC, ("O'Keefe") (248-593-4810 voice, 248-593-6108 fax), Scott Wolfson, as Liquidating Trustee ("Client") and Boyce Hydro Liquidating Trust ("Responsible Financial Party" or "RFP").
2. **Description of Work to be Performed.** O'Keefe agrees to provide professional services for Client as briefly described below as to purpose and assignment:

**Task 1: Analysis.** O'Keefe agrees to provide financial analysis regarding various financial and economic matters relating to this litigation that may require independent analysis, advice and/or opinion.

**Task 2: Deposition.** If necessary, will provide deposition preparation and testimony.

**Task 3: Trial.** If necessary, will provide trial preparation and testimony.

3. **Professional Fees.** O'Keefe will charge and RFP agrees to pay for services as follows:

**Task 1: Analysis.** Our services will be based upon our professional rates, which range from \$140 (Interns), \$150-\$240 (Analysts), \$250 - \$290 (Associates), \$300-\$470 (Directors) to \$650 per hour for Pat O'Keefe, CEO. C. Keith Chulumovich ("CKC") will be managing this project and his rate is \$380 per hour. Russel D. Long's ("RDL") rate is \$460. Our rates will change on January 1st of each year. Billings will be issued bi-weekly and will include out-of-pocket expenses. Such billings are payable upon receipt. We reserve the right to withdraw from this engagement if our payment terms as described above are not met. We will not testify if there are any billed amounts owed our firm. We are sensitive to utilizing the most cost-efficient personnel, to complete this engagement. We estimate the total fees to range from \$28,000 to \$34,000., not including any potential testimony preparation or testimony. This is a good faith estimate. If our billed services are less than \$28,000, we will bill at the lower amount. If the cost of our services is expected to go higher than \$34,000, we will get an agreement with you before incurring additional charges. We request a \$12,000 retainer to commence services, and this will be applied to our final billing with any excess being immediately refunded. Such retainer will be deposited into our Clients' trust account.

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**Task 2: Deposition.** O'Keefe will charge and RFP agrees to pay hourly rates, plus expenses for either CKC's or RDL's deposition. Deposition preparation hours and fees are indeterminable and will be in sole discretion of O'Keefe as to hours required.

**Task 3: Trial.** O'Keefe will charge and RFP agrees to pay hourly rates plus expenses for either CKC's or RDL's trial testimony. Trial preparation hours and fees are indeterminable and will be in sole discretion of O'Keefe as to hours required.

4. **Costs & Expenses.** O'Keefe will charge and RFP agrees to pay all reasonable travel and other extraordinary expenses incurred by O'Keefe occasioned by the performance of this engagement. O'Keefe will also charge, and RFP agrees to pay 3% of our professional fees representing an allocation of our internal support activities (computer usage, telephone charges, postage, printing, and other professional services). Such items shall be included in O'Keefe's bi-weekly invoices to Client. Payment for such expenses is due upon receipt of invoice.
5. **Timeliness of Payment.** RFP acknowledges that timeliness of payment is of critical importance to O'Keefe and agrees to abide strictly by this agreement and to pay fees and expenses when due. Payment for any balance due on Task 1 is due upon receipt and RFP agrees in any event to pay any outstanding balance prior to delivery of any expert testimony in deposition or trial. Any other amounts will be billed and will be due upon billing. Any amounts not paid when due will accrue interest at the rate of 1.5% per month on the unpaid balance commencing on the billing date. RFP agrees to pay interest accruing from the billing date on any overdue balances, plus any costs of collection and attorney fees incurred by O'Keefe in the collection of its bills. O'Keefe reserves the right to terminate this agreement at any time if payment terms are not met.
6. **Reservation of Trial date and Appearance at Trial.** Client agrees to obtain from O'Keefe its available dates in advance of agreeing to a date for trial. O'Keefe will use its best efforts to make CKC or RDL available and to reserve his/her time for trial but makes no guarantee that he will be available except on the dates provided to Client in advance of trial setting. O'Keefe will hold trial dates only upon receipt of the retainer set forth in the Professional Fees Section above. Upon receipt of said fees, O'Keefe will hold agreed upon date(s) for the exclusive use of Client, and use its best efforts to have CKC or RDL appear at trial, but in the event that such appearance is prevented by illness, personal emergency, disability, adverse weather, or other unforeseen circumstance affecting the availability of CKC or

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RDL, the only obligation of O'Keefe shall be the refund of prepayments, to the extent provided, for testimony not given, and such event shall give rise to no further obligation or liability on the part of O'Keefe, CKC, or RDL, nor relieve Client/RFP of any duties. In the event that the above-mentioned litigation is settled, or trial continued more than 30 days in advance of the trial date, O'Keefe will refund prepayment or apply it to a future trial date as appropriate. In the event that the litigation is settled, or trial continued 30 days or less in advance of the trial date, no refund or application to a future trial date will be made. In the event O'Keefe, in its sole opinion, does not receive information it requests to formulate its findings, it reserves the right to terminate its services at any time prior to deposition testimony.

7. **No Guarantee of Acceptance.** Client acknowledges that the opinion and/or expert testimony of O'Keefe under this agreement is its good faith opinion but is ultimately only the unbiased judgment of O'Keefe. Failure of its opinion to be accepted in any sense, or admitted as evidence, for any reason by any court, person, or government entity, shall not constitute a breach of any of O'Keefe's duties under this agreement, give rise to any cause of action by Client, nor relieve Client/RFP of any duties.
8. **Delivery Date Not Guaranteed.** O'Keefe agrees to use its best efforts to deliver its opinion and report within 30 days of the date it has received substantially all of the information it requires from the Client to perform Task 1, but because O'Keefe cannot control the timing of delivery of other information important for the findings, no guarantee of such delivery date is made. In the event O'Keefe does not deliver its findings by said date, it shall not be liable for any damages whatsoever arising there from, it will use its best efforts to deliver its findings as soon as practicable, and it shall be entitled to payment in full for its services as though it had delivered its findings by said date.
9. **Fees not Contingent.** Fees are not contingent upon any result.
10. **Use of Reports by Client/RFP.** Client/RFP acknowledges that any report or opinions resulting from this engagement apply only for purposes expressed in the written report, and Client/RFP expressly agrees not to use them for any purpose nor to disclose the results to any party who may rely on them for any other purpose, nor to copy or reproduce in any form in part or in full any report without the express permission of O'Keefe firsthand and obtained. In the event that Client/RFP discloses the results of any report, and a third party relies on said report as a result of Client/RFP disclosure, Client agrees to indemnify, save, hold harmless, and

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**February 27, 2023**

defend O'Keefe against any and all claims by said third party whatsoever.

- 11. Confidentiality.** O'Keefe agrees and acknowledges that all information delivered or made available to O'Keefe during the term of this engagement relating to Client/RFP, the litigation or the other parties to the litigation represents confidential and proprietary information of Client/RFP (all such information, collectively, "Confidential Information"). Confidential Information shall not be deemed to include any information which O'Keefe can demonstrate: (a) was in the possession of O'Keefe prior to Client's first contact with O'Keefe regarding the litigation subject hereof, (b) information that was in the public domain prior to Client/RFP's first contact with O'Keefe regarding the litigation subject hereof, or (c) information that was delivered to O'Keefe by any third party (other than attorneys or consultants of Client), provided such third party is not under any obligation of confidentiality to Client/RFP. O'Keefe agrees to use any such Confidential Information solely for purposes of this engagement and not to disclose any Confidential Information to any third party for any purpose whatsoever, without the prior written consent of an executive officer of Client/RFP. O'Keefe may disclose Confidential Information to its employees who have a need to know such Confidential Information for purposes of carrying out the terms of this engagement. O'Keefe will destroy all information provided to us by Client/RFP at the close of the engagement unless directed by you in writing to do otherwise. Such notice must be provided within 30 days after O'Keefe's final billing.
- 12. Indemnification of O'Keefe.** Except in the event that O'Keefe is Grossly Negligent in the performance of its duties, Client agrees to indemnify, save, hold harmless and defend O'Keefe against any and all claims, losses, actions, damages, expenses, or liabilities, whatsoever, including reasonable attorney's fees for which O'Keefe may become liable arising from the performance of this engagement and any related activities, whether brought by third parties known to O'Keefe or not. The obligations in this section shall extend to any controlling person of O'Keefe, including any director, officer, employee, subcontractor, affiliate, or agent.
- 13. Limitation of Liability.** O'Keefe and any of its partners, employees, agents, officers, directors, affiliates, subsidiaries, shareholders, successors, heirs, or assigns shall not be liable for any loss or damage except such as is a result of or attributable to O'Keefe's gross negligence, breach of any material provision of this agreement or willful misconduct. O'Keefe will in no case be liable for special, incidental, consequential, punitive, or exemplary damages, including lost profits or lost savings, whether or not such are foreseeable, or O'Keefe has been advised of the possibility of such damage. O'Keefe's liability, if any, under or in relation to this

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**PROFESSIONAL SERVICES AGREEMENT**

**February 27, 2023**

agreement and the engagement and services hereunder shall be limited in amount to the retainer from the Client/RFP to O'Keefe for services rendered under this agreement.

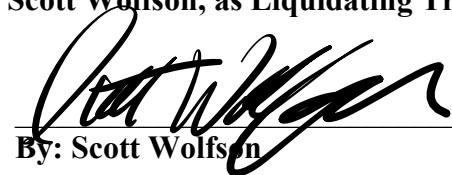
**14. Entire Agreement.** All prior agreements are incorporated in this agreement, which constitutes the entire contract. Its terms are intended by the parties to be the complete, final, and exclusive expression of their agreement with respect to the subject matter and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement.

This Professional Services Agreement is null and void if not executed and returned within the next ten days.

**IN WITNESS WHEREOF, the parties have set their hands.**

**Client**

**Scott Wolfson, as Liquidating Trustee**



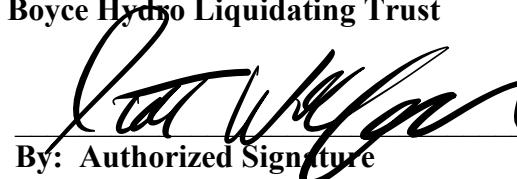
**By: Scott Wolfson**

Date:

*2/2/23*

**Responsible Financial Party**

**Boyce Hydro Liquidating Trust**



**By: Authorized Signature**

Date:

*2/2/23*

**O'Keefe & Associates Consulting**

Date:

**By: Patrick M. O'Keefe, Founder and CEO**